MISC. CRIMINAL APPLICATION NO. 1104 OF 1991.

Date of decision: 8.5.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. A.D. Shah, advocate for petitioner.
Mr. S.R. Divetia, A.P.P., for respondent-State.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Coram: R. R. Jain, J.

May 8, 1996.

Oral judgment:

A lady, Rambeti, wife of complainant, Suratram Sumersing Rajput, was admitted as indoor patient in Medical Unit No.2 of Bapunagar General Hospital on 31.3.1989 in Ward No. 6 of Dr. Dineshbhai A. Dani and Dr. Jagdipbhai Chhotalal Mehta. During treatment she expired on 4.4.1989. Believing that the doctors on duty were negligent and did not give proper treatment the husband lodged FIR on 4.4.1989 registered at C.R.No.104/1989 for offence punishable under Section 304-A read with Section 114 of IPC. The Court took cognizance on the strength of

this FIR and registered Criminal Case No.1207 of 1989. Aggrieved by the cognizance taken by the learned Magistrate for alleged offence punishable under Section 304-A read with Section 114 of IPC one of the doctors, original accused No.2, Jagdipbhai C. Mehta, has preferred this application under Section 482 of the Criminal Procedure Code for quashing the proceedings.

It is alleged in the FIR that since more than a month deceased Rambeti was not keeping good health and was taking treatment from Bapunagar General Hospital as outdoor patient. But finding no improvement was admitted as indoor patient on 31.3.1989 in Medical Unit No.2, Ward No.6 under supervision of Dr. Dinesh A. Dani and Dr. Jagdipbhai C. Mehta. As alleged even after admission she did not respond to treatment and complained of diarrhoea and blood vomiting on 3.4.1989. Despite this fact, as alleged, both the doctors did not give proper treatment whereupon the doctors decided for blood transfusion and told for arrangement of blood. That the complainant also contacted one Raghunandan Sitaram Sharma, Member of ESIC Zonal Committee and complained about negligent attitude of doctors. Ultimately, as alleged, deceased Rambeti travelled for heavenly abode at 2.30 P.M. on 4.4.1989. It is in this background that the impugned FIR has been lodged against the doctors, one of whom is the petitioner before this court.

From the record it transpires that post mortem examination of the dead body was also done at Civil Hospital by Dr. D.G.Desai and Dr. G.G. Kothari. Probable cause of death as shown in column No.23 is under:

"23. Post mortem findings are suggestive of severe anemia, hyper volemia of water, the small intestine shows inflammed ulcerated areas.
There was no blood in body and the body cavities contain clear-water fluid which suggest there is severe loss of blood and excess I.V. fluid is given.
Final cause of death will be given on verifying the case papers, x-ray and other investigations of patient during treatment."

The final cause of death is given as under:

"The death occurred due to severe anemia and hyper volemia of water as a result of pathology and its complications of intestine."

According to law, if the allegations made in the complaint/FIR are taken as true at its face value do not constitute any offence much less as alleged therein then

in exercise of inherent powers the proceedings can be quashed and set aside. Otherwise, continuation thereof would tantamount to abuse of process of law and unnecessary harassment to parties. In this case, the allegations are vague and general. In order to hold one guilty for negligence under Section 304-A of IPC one must show gross culpable negligence. The allegations of negligence must be certain and specific and must be directly attributing to the performance of duties and acts of the accused. There is no allegation as to how and where the petitioner was negligent and such negligence only is the cause of death. On the contrary, xerox copy of case papers produced by petitioner amply show that immediately after admission on 31.3.1989 after recording history and diagnosis she was given appropriate treatment. It does show that looking to the condition of patient she was checked again and again on 1.4.1989. On 3.4.1989 when the patient complained of bleeding with stool and vomiting she was advised blood transfusion and before that was also advised to go for blood grouping and cross matching. This noting was made at about 8 P.M. Thereafter keeping in mind the condition of patient, she was again checked at 10 P.M., that is, just within two hours and necessary instructions were given for collecting blood report. The doctors again attended her at 1.55 A.M. and 2.40 A.M. prescribing necessary treatment. According to diagnosis made at the time of initial admission the patient was severely anemic. The post mortem report also shows that small multiple ulcers were found on illium and the area was inflammed with oedema tour, at various parts of small intestine and on cutting various parts of body no blood was found. The cause of death shown in post mortem note also corroborates the diagnosis of doctors that the patient was anemic.

The small multiple ulcers found in illium can also be a reason for anemia and hyper volemic condition. On account of ulcer the fluid may percolate and collect in other parts of the body. Thus, the complication of intestine owing to pathology, that is, abnormality of body due to disease resulted into hyper volemia and anemia which was the ultimate cause of death.

On he face of it, even on going through record also no negligence can be attributed to the petitioner and other accused who attended the deceased Rambeti. There are no categorical allegations and, therefore, in absence of specific allegations even if the allegations made are accepted at its face value do not constitute any offence. Even accepting that the allegations constitute offence as

alleged then documentary evidence on record are not sufficient to implicate the petitioner in commission of offence and, therefore, this court would be justified in exercising inherent jurisdiction in quashing the proceedings so as to avoid unnecessary harassment to the petitioner. On this point I am also supported by decision of Supreme Court in the case of R.R. Kapur v. State of Punjab, AIR 1960 SC 866.

Apart from this fact, even assuming that the death had occurred on account of inefficient or improper treatment given by doctors then also they cannot be held responsible for offence under Section 304-A of the IPC. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment as held by the Supreme Court in the case of Syad Akbar v. State of Karnataka, AIR 1979 SC 1848.

The negligent act is an act done without doing something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or an act which a prudent or reasonable man would not do in the circumstances attending it. A rash act is a negligent act done precipitately. Negligence is the genus of which rashness is the species and, therefore, heavy burden is cast upon the person alleging negligence to prima facie establish the same. Thus, even if any error of judgment which gives rise to so-called negligent act cannot be a ground for prosecution. Any act done by a person in his best wisdom to take care of the situation and yet does not give positive result would be an error of judgment and cannot be said as negligence as otherwise also such act would be done by any man of common prudence. In the case of Tika Ram v. Rex, AIR (37) 1950 Allahabad 300, has also taken similar view. In he case of State v. Bhawanesh Kumar, AIR 1958 MP 205, it is observed that it is always easy to be wise after the event and to condemn the negligence what was only a misadventure and besides, 'a mere mistake'. An 'intellectual defect' is not sufficient to constitute criminal rashness or criminal negligence in law. There must be a wilful and forward confidence in his own opinion which was contrary to all reason and experience. The case papers evidently show that the doctors were attending the patient from time to time and giving appropriate treatment and also advised for pathological test and, therefore, on the face of it cannot be said as negligent in discharge of their duties. Death has occurred on account of abnormality of body due to

disease, that is, anemia, fever, pain in abdomen, ulcer, etc., as complained by deceased even since one month prior to death or her admission in hospital. Consequently, the death is on account of pathological complications only and not otherwise. Hence, the petitioner cannot be said as negligent as contemplated under Section 304-A of the IPC.

For the reasons stated above, the application is allowed. Proceedings of Criminal Case No.1207 of 1989 pending in the Metropolitan Magistrate's Court (10th Court), Ahmedabad are hereby quashed. Rule made absolute.